DOCUMENT RESUME

ED 412 616 EA 028 682

AUTHOR	Florestal, Ketleen; Cooper, Robb
TITLE	Decentralization of Education: Legal Issues. Directions in Development.
INSTITUTION	World Bank, Washington, DC.
ISBN	ISBN-0-8213-3933-8
PUB DATE	1997-00-00
NOTE	47p.; A preliminary version of this paper was presented at the Annual Meeting of the Comparative and International Education Society (March 24, 1997).
PUB TYPE	Books (010) -- Guides - Non-Classroom (055)
EDRS PRICE	EDRS Price MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	*Decentralization; *Decision Making; *Educational Administration; Educational Change; Educational Planning; Elementary Secondary Education; Institutional Autonomy; *Legislation; *School Based Management
IDENTIFIERS	*Basic Education; *Reform Efforts

ABSTRACT

In practice, most education systems have both centralized and decentralized elements. Planners involved in a decentralizing reform must identify which components of the system are more appropriately managed at the central level and which at the local level. This book is intended to inform education policymakers, planners, and practitioners about international experience in the legal aspects of decentralizing basic education. It also provides a basic understanding of how laws and regulations can be used for education reform. For purposes of the discussion, decentralization is used to describe efforts to transfer decision making power in basic education from the administrative center of a country to authorities closer to users. The term is also used in a more technical sense to describe one of the many forms this type of reform can take, and in this sense it is contrasted with deconcentration and devolution as educational reforms. The first section examines the general legal aspects of decentralization, and the second looks more closely at decentralization laws and regulations. The third section is, in effect, a checklist of items that should be included in decentralization laws, and the fourth section provides a road map to help the planner prepare and implement the laws required for reform. Although an effort has been made to keep the discussion general enough for use in many countries, the analysis is based on the legal systems of the Western world or those that they inspired. (Contains 35 references.) (SLD)

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DIRECTIONS IN DEVELOPMENT

Decentralization of Education

Legal Issues

KETLEEN FLORESTAL
ROBB COOPER

U.S. DEPARTMENT OF EDUCATION
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Ketleen Florestal
Robb Cooper

The World Bank
Washington, D.C.

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1818 H Street, N.W.
Washington, D.C. 20433

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First printing June 1997

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Cover photograph, by Curt Carnemark of the World Bank, is a scene from an Aga Khan Foundation School in Pakistan.

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Library of Congress Cataloging-in-Publication Data

Florestal, Ketleen, 1963–
Decentralization of education : legal issues / Ketleen Florestal, Robb Cooper.
p. cm. — (Directions in development)
Includes bibliographical references (p.) and index.
ISBN 0-8213-3933-8
1. Educational law and legislation. 2. Schools—Decentralization. I. Cooper, Robb, 1951– . II. Title. III. Series: Directions in development (Washington, D.C.)
K3740.F58 1997
344'.07—dc21 97-20083
CIP

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Foreword

This book was produced by the Education Team of the Human Development Department of the World Bank. It is one in a series covering a range of topics relating to restructuring education systems. As part of education and public sector reforms, many countries are choosing to decentralize the administration and financing of education services to the regional, local, or school level.

Successful decentralization of school systems is neither quick nor easy. It requires changes on many fronts, behavioral as well as institutional. This book deals with one aspect of the institutional changes needed in the decentralization of primary education systems: the legal aspect. It gives an overview of the legal issues involved and provides suggestions for designing the necessary legislation. The approach is practical. The book attempts to give suggestions to those who plan and implement education decentralization programs on the legal issues that they are likely to encounter and on preparation of the necessary legislation.

We hope that the practical nature of the book will make it useful to a wide audience of educators and administrators dealing with the complexities of education system development.

David de Ferranti
Director
Human Development Network
The World Bank

Preface

The responsibility for providing basic education is firmly written into the law in nearly all countries. National constitutions often mandate free and universal primary education, national and state legislatures enact laws to govern the provision of basic education, and governments and local administrations adopt regulations to implement these laws. To the lawyer, education law is part of administrative law, although education issues also spill over into a number of other branches of law. Every major attempt to decentralize basic education systems throughout the world has involved changes in the law.

Of course, other factors also influence the outcome of decentralization. While a formal education system is a product of the law, and reform efforts will require changes in the law, it is also true that

> Decentralization does not come with the passing of laws or signing decrees. Like most types of reform it is built rather than created. It happens slowly because the organizational culture (e.g., "the way we've always done things around here") must be transformed, new roles learned, leadership styles altered (e.g., shifting from controlling to supporting behaviors), communication patterns reversed, planning procedures revised (e.g., bottom up and top down), and regional policies and programs developed. (Hanson 1995: 9)

Indeed, decentralization has sometimes taken place without any legislative action. In a number of African countries and in Haiti, for example, "the transfer of service provision has been more de facto than de jure as central governments have simply become unable to exercise their established financial and administrative responsibilities in various sectors, instead passing them along to the local level by default" (Blair 1995: 19). Even in these cases, as governments resume the role they are expected to play in providing basic education, legal issues will need to be addressed.

The purpose of this book is to inform education policymakers, planners, and practitioners about international experience in the legal

aspects of decentralizing basic education. It also provides a basic understanding of how instruments such as laws and regulations can be used for education reform. There are four main sections. The first examines the general legal aspects of decentralization; the second looks more closely at decentralization laws and regulations; the third is, in effect, a checklist of items that should be included in decentralization laws; and the fourth sets out a road map to help the planner prepare and implement the laws required for reform.

Each country has different laws, and the terms used in one country may have different definitions in other countries. We have tried to keep the discussion of legal matters as general as possible here, so that this book can be used in any country. Still, the legal analysis is based on the legal systems of the Western world or the legal systems that they inspired.

Finally, the term *decentralization* will be used in two different ways. First, it will denote all efforts aimed at transferring decisionmaking power in basic education from the administrative center of a country (such as the central ministry of education) to authorities closer to the users (such as countries, municipalities, or individual schools). Second, it will be used in a more technical sense to describe one of the many forms this type of reform can take, and in this narrow sense it will be contrasted with deconcentration and devolution (see glossary).

Acknowledgments

This book is part of a larger effort by the Education Group of the World Bank Human Development Department to understand best practice in the decentralization of education systems. The paper was written under the direct supervision of Marlaine Lockheed, task manager, and the general guidance of Maris O'Rourke, senior education adviser. The paper benefited greatly from the advice and detailed commentary of Louis Forget, legal adviser, institutional affairs, and Bertrand du Marais, counsel, both of the World Bank's Legal Department, and Anne-Marie Leroy, senior public administration specialist, Europe and Central Asia and the Middle East and North Africa Regions Technical Department. Eluned Roberts-Schweitzer contributed research and discussion. The book was reviewed by members of the World Bank Advisory Committee for Education Decentralization: Albert Aime, Hans Binswanger, Sue Berryman, Timothy Campbell, Cathy Gaynor, Elizabeth King, Bruno Laporte, Dzingai Mutumbuka, Maris O'Rourke, Juan Prawda, Eluned Roberts-Schweitzer, Alcyone Saliba, Donald Winkler and Carolyn Winter. A preliminary version of the paper was presented at the Annual Meeting of the Comparative and International Education Society on March 24, 1997. Anca Novacovici provided excellent word processing and research backup. Ilyse Zable, American Writing Corporation, edited the book, and Damon Iacovelli, American Writing Corporation, laid it out.

1

Decentralization: Differences in Form, Degree, and Context

In a centralized primary education system most decisionmaking, monitoring, and management functions are concentrated in the hands of an education ministry or department. The central government regulates all aspects of the system, including those related to students, teachers, funding, and facilities. It sets policy and performs management functions, such as paying teachers, and providing preservice and inservice instruction. Since in practice some matters might be dealt with locally, school officials are given some power, but it is limited to day-to-day management, and they have very limited scope for initiative.

By contrast, a decentralized system is characterized by the exercise of substantial power at the local level on many aspects of primary education, subject to some limited control by the central government. Responsibility may be decentralized to a region, a province, a district, a town, or an individual school or a group of schools.

In practice, most basic education systems have both centralized and decentralized elements. In a partially decentralized system some powers remain in the hands of the central authority, and some are exercised locally. Planners involved in a decentralizing reform must identify which components of the system are more appropriately managed at the central level and which at the local level, given the country's particular circumstances and the objectives of reform.

Countries decentralize their basic education systems for a variety of reasons: to save money and improve management efficiency and flexibility, to transfer responsibility to the most capable level of government, to raise required revenues, to conform with a wider administrative reform or with the general principle that administrative responsibility should be vested in the lowest capable level of government, to give users a greater voice in decisions that affect them, to better recognize local linguistic or ethnic diversity. It is important to define the objectives of decentralization at the outset, so that they can act as measures of its success.

Deconcentration, Decentralization, and Devolution

So far, we have used only the broad meaning of decentralization: to move decisionmaking away from the center and closer to the users of the service. We now must look at the different kinds of decentralization. The general literature identifies three types of decentralization: deconcentration, decentralization proper (or delegation), and devolution. In the context of basic education we are concerned mainly with deconcentration and devolution.

Defining Deconcentration

Deconcentration is "the handing over of some amount of administrative authority or responsibility to lower levels within central government ministries or agencies" (Rondinelli 1984: 10). From a legal standpoint the key feature of deconcentration is that the people given additional responsibility are part of the central ministry, and they continue to act under the supervision of that ministry. In other words, decisionmaking authority is transferred within the same legal entity. Deconcentration puts more responsibility in the hands of central ministry officials who are located closer to the users of the service and will thus, it is expected, be more responsive to local needs. But deconcentration does not modify the basic notion that the people managing the education system are agents of the ministry. They act in the name of the ministry and are accountable to it. The central ministry remains responsible for the acts of its agents and for funding the system.

Distinguishing between Decentralization and Devolution

Devolution and decentralization in its narrow sense are characterized by the idea that the body or agency receiving the new powers is legally separate from the central ministry, which initially held those powers, and does not report to the central ministry. Authors differ somewhat in distinguishing between decentralization and devolution. In the case of decentralization (which is sometimes referred to as delegation) the body receiving the powers is typically a public corporation or a regional agency that may be subject to significant control by the central ministry.

There are few instances of this type of decentralization in the area of basic education.

In the case of devolution—a term found mainly in the English-language literature—the power to regulate the provision of basic education is given to local governments or to other local bodies that are associated with local governments. Often, the local body made responsible for some aspect of basic education is a local government (such as a county or a town government) or an agency with a territorial jurisdiction matching that of a local government (such as a county or municipal school board). Sometimes responsibility can be handed over to a body exercising jurisdiction over one or several schools. The French equivalent is *décentralisation* or *décentralisation territoriale*.

Devolution has four key features: the body that exercises responsibility is legally separate from the central ministry; the body acts on its own, not under the hierarchical supervision of the central ministry; the body can exercise only the powers given to it by law; and the body can act only within the geographic limits set out in the law. Also, such bodies are often supervised by a board of officials elected by the local population. Because the local body is legally separate from the ministry, it can enter into contracts and conduct other transactions in its own name. The local body is fully responsible for its acts; the central ministry has no responsibility unless the law specifies other arrangements.

Although the local body is not under the control of the ministry, it is nevertheless not entirely free to do as it pleases. Local governments must act within the limits set for them by law. These constraints also hold for special bodies established specifically to control certain aspects of the provision of basic education. Such bodies can act only within the limits set out in the legislation establishing them.

As a consequence of devolution, the local body is responsible for the functions assigned to it by law. Its agents act on behalf of the local body, and only the local body, not the central ministry, is responsible for them. As will be seen later, this has important consequences for the financing of basic education. A local body may be given responsibility for managing schools or paying teachers. Without a reasonably assured source of funds or the power to raise funds independently, the local body may not be able to discharge its new responsibilities. Similarly, granting authority to local bodies can be successful only if those bodies have the administrative capacity to discharge their responsibilities.

One of the usual objectives of decentralization is to improve the efficiency and equity of primary education by transferring responsibility to local authorities. However, unless the reform is well planned and implemented, these objectives may not be fully realized. For example, if legislation decentralizes the source of funding, leaving it up to local

authorities to raise funds, there may be a significant lag between the time when the central authority is freed from its responsibility and the time when local authorities have the capacity to raise and allocate funds. In such a case, if legislation does not provide for a transitory solution, such as a compensating grant scheme, regional disparities may develop.

The law generally specifies the duties and obligations of school boards. In New Zealand, for example, The Education Act of 1989 gives a school's board of trustees "complete discretion to control the management of the school as it thinks fit" (section VII, paragraph 75). A board "may from time to time, and in accordance with the State Sector Act 1988, appoint, suspend, and dismiss staff" (section VII, paragraph 65).

In Nicaragua the municipal education councils, established by decree of the Ministry of Education, are responsible for administrative functions delegated by the center to the local or municipal level (Gaynor 1996).

Local bodies may be subject to a wide range of general laws, in addition to those dealing directly with education. For example, in Ontario, Canada, "in addition to legislation, regulations and policies on education, school boards must comply with other legislation such as the Occupiers' Liability Act and the Occupational Health and Safety Act, unless exempted by the statute." Thus there are "many non-education statutes both federal and provincial which directly or indirectly govern or determine the conduct of school boards" (Brown and Zuker 1994: 11). For instance, they may have the general duty of caring for students, and "failure to have an adequate playground supervision policy could result in a finding of negligence against the board where the failure results in an accident" (Zuker and Brown 1994: 50). Similarly, a school or school board may have the legal responsibility for hiring and could be sued for employing inadequate personnel.

The Question of Formal Control

A key question in any decentralization effort is to define how much control the central ministry will exercise over the local body. At one extreme, if the central ministry controls local bodies as tightly as it controls its own agents, the situation would be that of deconcentration, not decentralization or devolution. At the other extreme, if the central government exercised no control, the local body would have political power, and the situation would be that of a federal state. It is between these extremes that the control of the central government will be defined.

Generally, local bodies can act only within the limits of the law that established them or regulate them. In some cases a government ministry may exercise control over them. For example, local governments are often under the indirect control of the ministry of the interior. In other cases control may be exercised through court actions. In some rare cases control may be exercised only before a decision of the local body becomes effective (such veto power would end the autonomy of the local body). In others control can be exercised only after the decision has been made.

The decisions of the local body may be subject to annulment under certain conditions specified in the law. Alternatively, the controlling body may have the power to force the local body to reconsider its decision. The law may also provide an emergency scheme, under which the local authority's powers would be repealed if it failed to act in a manner consistent with the law. In either case the law would determine whether remedial action could be taken by the central ministry or by a court.

When devolving decisionmaking authority, policymakers may want to balance local bodies' autonomy with some control by the central authority or the judiciary. A careful balance must be struck between the need to provide safeguards against local bodies taking arbitrary actions and their need to maintain autonomy. One option is to leave it to individuals affected by an allegedly arbitrary decision of a local body to seek redress through court action. Another option is to provide a repeal or suspension mechanism, such as granting veto power to the central authorities or allowing for the reversal of power from the local bodies to the center. However, if procedural requirements for vetoing or repealing an act are too strict, they may inhibit the exercise of such an option.

An example of such a control mechanism is found in Papua New Guinea, where the national government has been given the power to veto provincial tax laws if it regards them as discriminatory (particularly against residents or products of other provinces) or excessive (if they affect taxpayers' capacity to pay central taxes). This power to repeal is limited. The vetoing process involves not only the central government but also the National Parliament and the National Fiscal Commission (NFC). It ensures that the Parliament and the NFC provide protection against arbitrary actions by the central government but limits their power to disallow provincial laws even if they reveal themselves as inefficient or inequitable (Ghai and Regan 1988).

Even if local authorities are given the exclusive right to take initiative on education matters, a certain level of control may still remain at the center. That level will indicate the extent to which there is a

move toward decentralization. Limiting the powers of local authorities may influence their willingness to undertake new functions. Nevertheless, such a restriction may be justified if local bodies are inexperienced. If they fail to perform the newly allotted functions correctly, the central authority would be allowed to override their powers.

Shared Responsibilities

The formal controls established by law are not the only limits placed on local bodies' freedom to act. Since the components of the education system are by and large interdependent, the actions of local bodies may also be limited by the actions of the central authority. For several aspects of the system there are many types of relationships that can be established between the central government and local bodies.

For example, even if local authorities are given responsibility for the curriculum, their freedom of action may be limited by national requirements dictating the minimum standards students must meet to move up to the next level. The central government may also set the broad parameters of the curriculum and then let local authorities choose textbooks, or it can impose topics for a part of the school day, leaving the rest of the time for local curriculum. Funding school systems may also raise issues concerning shared responsibilities, depending on the freedom local authorities have to establish their own budgets and raise their own resources.

Such shared distribution of power may affect local accountability and efficiency. If decisionmaking capacity is awarded exclusively to local bodies, accountability may be enhanced. On the other hand, shared responsibilities may promote efficiency and consistency if the central authority can better the process or if local bodies are not ready to assume full responsibility.

Decisionmaking Authority

Countries that decentralize their primary education systems will start from varied governmental structures (very centralized, moderately decentralized) and distribute responsibilities for education functions differently (see box 1). Several factors will influence where within the local government structure education powers and responsibilities are

transferred. These factors include financial considerations, such as the potential to raise funds, proximity (geographic and administrative) to the facilities and to the users of the system, and the present and potential management capacity of the bodies involved.

In Argentina reforms initiated in 1978 resulted in the transfer of responsibility to the provinces, but "no deconcentration to the municipalities has been ever attempted within the decentralization process" (Prawda 1992: 60). In Ghana "the decentralization of the education administrative system has shifted the locus of responsibility and managerial functions from regional to district level" (Asare-Bediako and others 1995: 24). In Zambia the Ministry of Education recognized that the existing system was too centralized and in August 1995 proposed a reform of the Education Act that would establish district education boards.

Context and Pace of Decentralization

Decentralization can take place as part of wider political reforms, as in South Africa and Eastern Europe, or it can be undertaken in the absence of such reforms. Decentralization can be completed quickly, as was the case in New Zealand, or be achieved more gradually.

The many variations can be summarized by three broad categories. First, when education reform is undertaken as part of an overall decentralization program, there is usually room for effective geographical and functional decentralization. Assuming that a consensus on the need for reform is reached, legislation mandating the decentralization of government may also include provisions on the decentralization of education (see box 2).

Second, if the decentralization of government has already been provided for (or taken place), then at the time of reform local and regional government structures will already exist legally and in practice. Decentralizing education may be facilitated if strong regional infrastructures are in place. For example, in Chile in the early 1980s, "the relative ease of institutionalizing decentralization was attributable to the strong administrative capacity at all levels of government and by effective public financial management and control at the center" (Espinola 1995: 1). However, problems may arise if existing local entities are poorly suited to carry out education functions. Parallel structures may have to be created for education. If responsibilities are not clearly delimited, local school authorities may end up competing for power with local government structures.

Box 1. Local Government Structures

Government bodies below the national level vary from country to country in terms of their degree of autonomy, legal personality, and governance structure. Within federal countries there may be significant differences among the federated states. Also, names of local government units can have different meanings in different countries.

Generally, two levels can be identified below the central state (or in the case of federal countries, below the federated states, which usually have responsibility for education): an intermediate level between the central state and the municipality (such as counties or districts in many English-speaking countries, or regions and departments in France), and municipalities. In some countries, however, the bodies exercising responsibility for education may not have the same territorial scope as any of the government levels. For example, the territorial jurisdiction of the French *académies* does not match exactly the territory of the *régions*.

Ghana
Three levels of local government share responsibility for education: the district, the municipality, and the metropolis. Under the 1993 Local Government Act the governments are to be created by the president according to (at least) the following criteria:

- For a district, a minimum population of 75,000.
- For a municipality, a geographic area consisting of a single compact settlement and a minimum population of 95,000.
- For a metropolis, a minimum population of 250,000.

Philippines
The Local Government Code of 1991 distinguishes four principal local government units:

Third, the decentralization effort may be confined to the education sector. This may be the case in a centralized government, where at the outset responsibility for education functions were not well defined. It also may be the case if education is considered a test sector for decentralization. Moreover, political pressure may also reduce wider decentralization schemes to only the education sector. When education is decentralized in such a context, the task goes beyond creating new laws and regulations (see box 3).

It becomes crucial at the beginning to ensure that all implementation issues, such as the establishment and administration of local governance structures (whether under a deconcentration or a devolution scheme), are dealt with in order to avoid the risk that the reforms will

- The *barangay*, which "may be created out of a contiguous territory which has a population of at least 2,000 inhabitants" (Section 236) and which "as the basic political unit . . . serves as the primary planning and implementing unit of government policies, plans, programs, projects and activities in the community" (Section 384).
- The municipality, "consisting of a group of barangays, serves primarily as a general-purpose government for the coordination and delivery of basic regular and direct services and effective governance of the inhabitants within its territorial jurisdiction" (Section 440). A municipality may be created if it has an average annual income as certified by the provincial treasurer of at least 2.5 million pesos for the last two consecutive years based on the 1991 constant prices, and a population of at least 25,000 inhabitants.
- The city, "consisting of more urbanized and developed barangays, serves as a general-purpose government for the coordination and delivery of basic, regular, and direct services and effective governance of the inhabitants within its territorial jurisdiction" (Section 448). A city can be created if it meets a composite list of criteria on income, size, and population (Section 450).
- The province, "composed of a cluster of municipalities, or municipalities and component cities, and as a political and as a corporate unit of government, serves as a dynamic mechanism for developmental processes and effective governance of local government units within its territorial jurisdiction." A province also must fulfill a minimum income criterion and a geographic size or population criterion.

Source: Ghana, 1993 Local Government Act; Philippines, Nolledo 1994.

be made in an institutional vacuum and suffer from a lack of experience, infrastructure, and implementing bodies. The experience of Papua New Guinea is telling in this regard. Administrative decentralization of the education sector was introduced in 1970 with the creation of district education boards (DEBs). It was only in 1977, however, that political decentralization was undertaken and provinces created. The DEBs were transformed into provincial education boards with extended powers (Bray 1996).

In most cases reform was not accomplished by the passage of a single law, and there were several waves of legal reforms. In Chile, for example, the decentralization process was accomplished in two stages: a financial decentralization between 1973 and 1989 followed by a ped-

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agogic decentralization in 1990–95. The financial decentralization was carried out through the enactment of two decree-laws: the municipal revenues law that enabled municipalities to make use of a higher share of fiscal funding and to administer education, health, and other social services (Decree Law No. 3073: 1979), and the subsidy law, which improved the existing subsidy to private schools by substantially increasing the subsidy value and by allocating resources according to the number of pupils attending each school (Decree Law No. 34676: 1980)" (Espinola 1995: 3). In fact, Chile "induced privatization of primary education through decentralization." Also, "the Chilean private sector participating in the delivery of primary education is obliged to comply with the existing educational legal frame set by the central government, and is only accountable to the consumer (students and parents) for the services provided" (Prawda 1992: 14).

Box 2. India's Experience with Decentralization

The decentralization of the Education Service in India is the outcome of a democratic decentralization that was initiated a few decades ago and whose main thrust was the implementation of the *panchayati raj institutions*, three-tiered governance structures of locally elected bodies. The present decentralized system was initiated by constitutional mandate (Constitution 73rd Amendment Act, 1992, or CSTA) leaving each state the initiative of passing the appropriate Conformity Act by April 1994. The constitutional mandate itself left considerable room for the state governments to design their own functional mapping of local governance subject to "the availability of funds" and as they "deemed fit." As a result some states devolved a considerable number of their education functions to the local level, making the panchayats models of self-governance; others did not and had their panchayats remain only "agents" of the state government.

Fiscal autonomy varies. Some states have empowered the panchayats at all levels to approve their own budgets and by-laws, levy taxes, borrow from financial institutions without the approval of a higher tier of panchyat or of state government, while others have left the preparation and presentation of budgets to the executive authority rather than to the elected representatives.

The links between different tiers of government, especially those between the state and substate levels, vary from one state to another and determine the degree of decentralization of the education sector. Certain states (such as Kerala) have not devolved education functions to the panchayati raj institutions.

Source: Fiske 1996.

Box 3. Major Stakeholders' Accord in Mexico

After more than a decade of abortive attempts consensus on decentralization was reached in Mexico through an *Acuerdo Nacional para la Modernización de la Educación Básica* signed on May 18, 1992 by the federal government, the government of each state, and employees of the National Syndicate of Education (*Sindicato Nacional de Trabajadores de la Educación*). The acuerdo is meant to address "the ambiguity in the distribution of responsibilities between the federal, state, and municipal governments." The introductory chapter of the document states that the Mexican constitution gives the federal government legislative capacity in education and that the federal government has issued an educational law calling for agreements among the three levels of government on the distribution of responsibility for education functions. Thus the acuerdo is considered an instrument for implementing the law.

Through the acuerdo the management of education employees is devolved from the federal to the state level, and municipalities are made responsible for "maintenance and equipment." Financing is shared between state and federal governments, the latter having the duty of subsidizing less wealthy states in order to safeguard equity. Nevertheless, the federal government remains responsible for most important functions of the education system, such as the planning of basic education, the choice of textbooks, assessment, and teacher training (Mexico 1992:9).

Source: Mexico 1992 (p. 9).

2

Legislation for Decentralization

Once the objectives of the decentralization program are established and the context in which it will take place is known, the legal instruments that will be used must be defined. These will vary from country to country, depending on the existing legal and regulatory frameworks. In most cases a basic law governs the provision of education. This law must be amended to provide the new legal framework for the decentralized system.

Two sets of questions will need to be addressed. First: which aspects of the reform must be addressed in the law itself and which can be left to decrees or regulations? Second: which other laws must be taken into account or modified in order to implement the reform? Reformers may need to consider certain provisions of the national constitution and may need to amend the laws governing the powers and functions of local authorities and the laws governing the status of teachers as civil servants.

Diversity of Legal Instruments

The rules of the existing legal system in a given country may be set out in several sources. Apart from the constitution, the highest source is the law. Laws are adopted by parliaments or national assemblies, enacted according to formal steps (such as signature), and then published. Parliaments have the widest latitude in choosing the contents of legislation and are limited only by the requirements of the constitution and, in some systems, by international treaties to which the country is a party. In some countries "organic laws" defining the organization and attributes of government institutions may have constitutional status. Laws are adopted by the national assembly after a complex and often lengthy procedure and can be amended or repealed only by the same body, following similar procedures. For this reason laws should contain only the basic principles of the new decentralized system.

Administrative and procedural details that may have to be modified as problems arise may be dealt with through government decrees or

ministerial regulations and orders, which also have the force of law if they meet requirements for this purpose. These instruments are adopted by the executive branch rather than the legislative branch, and the process of adopting or modifying them is generally simpler, as it does not involve the legislature. If properly adopted and published, decrees are generally compulsory. They are more flexible tools than laws. However, in each system there are limits as to what can be dealt with in decrees rather than in laws. Indeed, decrees are intended to facilitate the application of laws and to deal with procedural matters. (These instruments have many different names and different bodies can adopt them. In some cases the executive may have the power to adopt "decree-laws" or similar instruments in emergency situations or when, for other reasons, the executive acts in lieu of the legislature.)

One of the objectives of decentralization is to give the power to regulate parts of the education system to local bodies. These bodies normally act by adopting regulations, which, when adopted in accordance with the limits of the powers granted by law, are legally binding.

In practice, the system often emerges from a series of laws, decrees, and other instruments adopted at different times. In Colombia a new constitution and general education law, as well as a decentralization law, provided the legal framework for the decentralization of education in 1991. In Ghana decentralization was implemented with the passing of the 1988 Local Government Law, which was reinforced in 1994 by the Local Government Act. The decentralized regime in Chile was supported by ad hoc presidential decrees for nearly a decade, with an education law enacted only in 1989. In Brazil decentralization involved the enactment of new constitutions at both the federal and state levels in 1988 and 1989 (dos Santos and Camilo 1993: 397). In England a complex series of acts of parliament and statutory instruments governs the education system, notably the 1994 Education Act (the Butler Act), the Education Reform Act of 1988, the Further and Higher Education Act of 1992, and the Education Act of 1993 (United Kingdom 1995: 7).

Contents of the Legislation

A review of several countries' experiences with decentralization leads to the conclusion that decentralization legislation should have three basic features:

- It should be comprehensive enough to clearly define the rights and obligations of the respective entities involved.

- It should be flexible enough to allow for efficient implementation.
- It should be realistic, primarily in taking into account implementation constraints.

Three decades ago, discussing educational planning and administration in East Africa, Roger Carter noted that, "good legislation is a matter of balance. The main consideration is whether it allows elbow room for initiative and development both at the center and in the parts." He added that, "the amount and nature of the legislation that is necessary in a particular country will depend upon local circumstances, traditions and temperaments as well as on the activities that are to be regulated" (Carter 1966: 32). This is still the case today.

The required "elbow room" will be provided if the law is cast in terms that are general enough to allow its implementation to evolve, and if it defines the power given to other bodies in terms broad enough to eliminate undue constraints. At the same time the legislation should be precise enough so that the parties involved in the administration of the system know their respective responsibilities.

Foresight is crucial. For example, one common consequence of decentralization is that local authorities become liable for their acts or omissions, including those resulting in unsafe school buildings. Examples of local responsibility for schools abound. In Chile in 1980 the Decentralization Act transferred responsibility for school premises from the Ministry of Education to the municipalities (Bullock and Thomas 1996). In Zimbabwe church authorities or district councils own most schools (Bullock and Thomas 1996). Unless care is taken to specify the respective roles of the various bodies involved, the lines of responsibilities may become blurred. In France, for example, schools are established as autonomous local bodies, but these bodies are headed by a principal appointed by the central government who must rely on funds provided by the local authorities to maintain the schools. When planning the devolution of school ownership or management, planners should beware of such legal implications and try to assess the capacity of local authorities to take on these responsibilities.

Transitory arrangements are often required. If the legislator moves too fast, chaos may ensue. The new functions transferred to the local authorities may exceed their capacity. Responsibilities must be matched with authority and resources. A law that is not realistic in this regard will not be complied with.

Gaining consensus and establishing a realistic timeline for enacting different pieces of legislation are also important to successful implementation. Formal mechanisms for gaining consensus, such as consul-

tative or review committees, can be set up. These committees may be temporary or permanent and may deal with the preparation of the reform as well as its implementation. Broad consultations in New Zealand, for instance, contributed to the success of reforms. Reforms began in May 1989 only after "political and educational leaders [had] been careful to develop a broad consensus for each stage of the decentralization process" (Fiske 1996: 16). In fact, after publishing a major planning document, *Tomorrow's Schools* in July 1988, the Ministry of Education organized a four-month campaign soliciting public comments. Tens of thousands of New Zealanders offered comments through large public meetings in seventeen cities and towns and in many smaller sessions (Fiske: 16).

In Venezuela the congress did not adopt any new legislation, and the executive branch initiated public administration reforms through presidential decrees in 1969 and 1972. The congress did not support the decrees and refused to allocate funds for the reorganization. Thus no new education laws were passed concurrently to support the reforms. Nevertheless, the executive branch implemented a new administrative structure based on the decrees, and the new legislation was passed in 1980 (Hanson 1986). In Argentina decentralization efforts were first supported in 1993 by a new organic law of education, but achieving political consensus required a congressional bill that had to be "watered down so as to be vague and general enough for all parties to declare victory for their positions" (Hanson 1995: 9). These delays can be avoided by involving stakeholders at the beginning of the process of drafting new legislation.

Potential Conflict between Laws

It is important that the new legislation not conflict with the constitution or with other existing laws. Educational reforms may not only require modification or enactment of legislation specific to basic education but also may affect other laws. To determine what type of legislation must be enacted, one has to be aware of conflicts that may arise at different levels of the legislation. Common sources of conflict are

- General principles of individual rights and freedoms, as well as specific requirements concerning basic education, set out in constitutional acts or human rights charters.
- Inconsistencies between the objectives of the decentralization law and other laws, such as labor or tax laws.

Various statutes, laws, and decree-laws dealing with the establishment of autonomous bodies, teacher status, taxation, labor relations, and social security that affect different aspects of the primary education sector may also need to be modified as part of the decentralization project. In New Zealand legal changes included a revised public finance act, education guidelines, the granting of new legal authority to the Education Review Office, and accreditation procedures. In Eastern Europe, where changes in the political system demanded the radical transformation of the old education system, decentralization involved the enactment of education acts as well as amendments to laws governing local government, taxes, elections, and so on.

Constitutions and Similar Instruments

Most constitutions written in this century address education. For example, Mexico's Constitution of 1995 provides that "elementary education shall be obligatory" (article VI) and that "all education provided by the State shall be free" (article VII). According to Haiti's Constitution of 1987, "education is the responsibility of the state and its territorial divisions. They must make schooling available to all, free of charge, and ensure that public and private sector teachers are properly trained" (article 32.1). Moreover, "primary schooling is compulsory under penalties to be prescribed by law. Classroom facilities and teaching materials shall be provided by the state to elementary school children free of charge" (article 32.3).

In addition, constitutional provisions that guarantee freedom of worship, instruction in a particular language, or maximization of human potential may have an impact on decentralization efforts. For example, freedom of worship is a fundamental right under the Constitution of India, and educational institutions established under article 30 (linguistic and cultural minorities) are required to admit students from other communities.

Other norms that need to be taken into account are those contained in international human rights instruments, such as the Covenant on Economic, Social, and Cultural Rights of 1966, which is in force in more than 130 countries. Article 13 (a) of the covenant states: "Primary education shall be compulsory and available free to all." The principle of free universal primary education is often reiterated in the basic laws on education (see box 4). For example, in Zimbabwe articles 5 and 6 of the 1987 Education Act establish the

principles of "children's fundamental right to education" and of "free primary education."

Conflicts may also arise from the overlap of functions and from inconsistencies in the law. In Colombia three levels of government are supposed to prepare plans for the education sector, in addition to the educational project prepared by the schools. However, there are no mechanisms—provided either in the regulations or in practice—through which such plans are coordinated. Plus a job carried out by a given level could possibly be dislodged by a higher level.

Labor Laws

Decentralization legislation may also need to include changes in statutes or laws regulating the status of teachers as civil servants and their labor rights. Changes in teachers' status may also modify their degree of academic freedom. Often, teachers are civil servants, and their recruitment, transfer, and promotion come under the jurisdiction of the national government. With decentralization, the status of teachers as public service employees must be reassessed, taking into account the power that local authorities have over them. This issue is important because teachers are often the largest group of civil service employees and may be one of the largest groups of employees in a country.

Another key issue is that of the labor rights of teachers. For example, if a civil service statute grants teachers the right to organize a union, to be recognized as the exclusive representative of employees, to negotiate labor agreements, and to strike, those rights may be jeopardized by decentralization efforts that may change the status of teachers as civil servants. In Chicago the state legislature simply withdrew the right of teachers to strike for three years after the passage of the 1995 reform statute (see box 5). In Colombia the legislators acknowledged the rights of the union and amended the restructuring process to acknowledge the labor rights of teachers.

In Chile decentralization laws included modifications of regulations governing teachers. Teachers now have the choice of being common public employees regulated by the Common Labor Law or being employees of the municipality, which has wide discretionary powers over hiring, firing, and salaries. When unions were banned in 1980, teachers lost their bargaining power, and their consequent insecurity led to their low acceptance of decentralization. In 1987 a special law regulating teachers' working conditions had to be issued.

Tax Laws

Some have asked whether there can be true decentralization without granting control of funding to local authorities. Others have asked if, when the responsibility for funding is shifted to the local level, there will be enough safeguards to ensure equity. If money is centrally allocated and disbursed to local authorities, what kind of safeguards must be established to ensure that it is spent appropriately?

Conflicts may also arise when the provision of funds remains with the ministry of education, while delivery of basic education becomes the responsibility of local entities that are under the jurisdiction of another ministry. For instance, in many countries the ministry of edu-

Box 4. The French Primary and Secondary Education Systems

Since 1882 primary schooling in France has been compulsory and free. The provision of education is constitutionally a state function. Responsibility for education has been concentrated in the Ministry of Education, but from the outset municipalities have been responsible for constructing, maintaining, and financing recurrent costs of primary schools (except for teachers' wages). Decentralization efforts initiated in 1982 have extended these responsibilities to the *départements* for lower secondary schools (*collèges*, grades 6 to 9) and to the regions for higher secondary schools (*lycées*, grades 10 to 12). The state still pays the wages of administrative staff and finances "pedagogic" expenditures, such as textbooks and educational materials. Also since 1982, an important deconcentration effort has given responsibility for 28 regional *académies* to individual schools, especially in jurisdictional mapping and the allocation of staff positions. For primary schools this responsibility is further deconcentrated to the département level of state administration (*Inspection d'académie*).

The state retains responsibility for managing teachers (recruitment, assignment, dismissal, and promotion), but this responsibility has been almost completely deconcentrated to the inspections d'académie for primary school teachers, and to the académies for secondary school administrative staff and nontenured teachers. In-service training and inspections are the responsibility of académies and inspections d'académie. For secondary schools only tenured teachers' recruitment, interregional transfers, and promotions are handled by the central ministry. All nonteaching staff (teachers' aides, cooks, and so on) in primary schools are municipal employees.

Primary schools are organized through school councils composed of the mayor, the principal, teachers, parents, and a representative of the inspection d'académie. The council votes on internal school regulations, sets the

cation is responsible (fully or partly) for providing funds to municipalities that are legally under the jurisdiction of the ministry of local governments or the ministry of the interior.

The decentralization effort in Nigeria is a good example. Each state has its own educational law, and the rules and regulations administering the law are specific to the state. However, the federal government passed a law in 1992 committing it to pay teacher salaries for primary schools, to be responsible for the construction and maintenance of primary school buildings, and to establish curriculum guidelines. Thus education is a state function even though the states must comply with federal requirements in order to receive funds.

Another telling example is the experience of Zimbabwe. "Changes were made in payment of school per-capita grants by the Ministry of

timetable for the school week, and is consulted on safety issues, meal service, extracurricular activities, and the use of allocated resources. The teaching team draws up a "school project," which is adopted by the council. The school project defines a pedagogic "action plan" for the school year, encompassing all curricular and extracurricular school activities. Secondary schools have greater autonomy; they are established as autonomous legal entities under supervision of the académie. Collèges and lycées establish their own budgets for textbooks and teaching activities, which are adopted by the school council and funded by lump-sum subsidies from the académie and, for administrative expenditures and maintenance, from the local authorities.

Curricula are set by decree and are mandatory for all teachers. Curricula are defined in broad terms, and teaching methods are left to the initiative of the teachers. The school project may take advantage of the flexibility of the curricula to adapt the contents and methods of teaching to the needs of the school's students. Textbooks are financed by local communities for primary schools and by the state at the secondary level, but are chosen by the teachers. There are no official textbooks and no procedure for approval. Local government units deal mostly with noninstructional aspects of the education system. To create a school, the municipal council, the département, or the region decides what schools are to be created and where, after consulting the state representative. A June 1985 law gave to the state the power to create a new school when the central government judges it necessary for the fulfillment of its constitutional mandate. A 1986 decree extends the power of the central government to being able to demand that proper facilities are made available for schooling.

Source: France Ministry of National Education.

Box 5. Chicago's Bitter Initial Experience with Decentralization Legislation

For a long time Chicago's public school system was very centralized. It had an eleven-member board, appointed by the mayor, a general superintendent, a collection of powerful unions representing teachers and other employees, and a horrible reputation for educating children. In fact, former U.S. Secretary of Education William Bennett referred to the schools as the worst in the nation. In an effort to reform the school system, the General Assembly of Illinois passed a reform statute in 1989 that created a local school council for each school in the system.

Each local school council was empowered to make employment decisions regarding the principal, to advise the principal on curricula and school improvements, and to exercise control over $400,000 at each elementary school and $800,000 at each high school. The expenditure of funds was subject to audit by the Chicago Board of Education.

It quickly became apparent that the local school councils were going to become politicized. It also became apparent that sometimes principals would pander to the interest groups represented on the councils and in many instances would attempt to control the bodies. In one case the principal was reportedly paying council members from his own pocket in order to ensure continued employment. Council members used their positions to ensure Board of Education employment for themselves, relatives, and employees. The union also opposed the reform, and there were two bitter strikes. Student achievement did not improve between 1989 and 1995.

In 1995 the General Assembly reformed the last initiative and again restructured the system. The board was reduced to five members, all appointed by the mayor, and a two-headed administrative structure was established. The chief education officer had a background in education, and the chief administration officer had a background in budget analysis.

More significantly, the legislation ordered new elections, removed the unions' right to strike, drastically modified tenure rights, and ordered new elections for the spring of 1996. The board responded by initiating a rigorous review of local school councils' expenditures, establishing an office to investigate allegations of misconduct by councils, and creating a strict code of ethics to limit the opportunities for graft.

This attempt at decentralization required the setting aside of a portion of a labor statute, a modification of the statute governing tenure rights, and a complete overhaul of the statutory sections dealing with the duties and powers of the school board. This effort also resulted in litigation challenging the constitutionality of the modification of tenure rights.

Source: Peter Applebome, "Chicago School Decentralization Provides Lessons, But No Verdict," *The New York Times*, 8 November 1995.

Education, which was unhappy with the use being made of these by local government bodies (rural district councils) who manage the majority of primary schools. The Ministry of Education wanted to audit the use of these funds but [this] was refused as rural district councils come under a different ministry. The changes were successfully challenged in court by the Ministry of Local Government, Rural and Urban Affairs, whose position was ratified [by] the Local Government Act of 1988. The Ministry of Education then got an amendment to the Education Act allowing it to set up School Development Committees and to bypass local governments in making per-capita grants to schools" (Gaynor 1996: 32).

Zimbabwe's 1987 Education Act stipulates that "every child in Zimbabwe shall have the right to school education" (article 4:1) and that "it is the objective in Zimbabwe that primary education for every child of school-going age shall be compulsory" (article 5). Furthermore, "it is the objective in Zimbabwe that tuition for primary education shall be free and the minister shall encourage the attainment of this objective, in particular by the making of grants and other subsidies to all schools" (article 6).

Another related issue is that of granting power to manage resources. For example, in Colombia municipalities were given the responsibility for administering education but had very little input in managing resources. There, the *Ley General de Educacion* gives the school a special role in the education management process. But schools have no control over financial resources, nor can they influence decisions relating to the appropriation of the educational budget to the local level—which in the end will determine the schools' ability to develop their activities and programs.

Uncertainties may also result from a void in the law, as in Brazil, where, "according to the Federal Constitution, the Brazilian states and municipalities are obliged to invest at least 25 percent of their tax revenues in education. The Constitution does not specify, though, what the responsibilities of each of these two levels of government are" (Mares Guia Neto 1994: 9).

3

Items to Include in the Decentralization Legislation

After the objectives of the decentralization effort have been defined and decisions have been made concerning the responsibilities of the bodies involved in the basic education system, we must look more closely at the content of the proposed education decentralization law. This section contains a list of questions that the planner may ask in order to define more precisely that content.

Students and School Choice

Three basic questions involving students must be addressed in the decentralization plan:

- Who may attend a particular school?
- If students are given a choice of which school to attend, how will equity issues be addressed?
- Who will determine the minimum age of entry, the age of graduation, appropriate disciplinary measures, student attire, and advancement and graduation requirements?

Some education systems allow children to attend any school within the system, while others limit admission on the basis of residence, geographic boundaries, or academic achievement. If local schools are allowed to make admission decisions, the bases for those decisions should be addressed in the law. Otherwise, decisions of school administrators may appear arbitrary. A mechanism to ensure that students' rights of entry into the system are upheld must be established. The mechanism may be as simple as requiring each school to publish its admission policy and to file an annual report listing the pool of applicants and admissions. Sanctions, such as partial withholding of funds or probation for accreditation, may also be considered.

If choice is allowed, the law must address the related equity issues. Questions to be addressed include how choice is publicized, how students are selected, and what happens to those students who do not get their choice. The system as a whole would need to ensure that all students are accepted to at least one school, under reasonably equitable conditions. Failure to address these issues may result in unequal educational opportunities and failure to meet the education standards found in many constitutions.

Most countries have nationally established standards regarding the age for beginning and leaving school. If decisionmakers choose to allow local schools to establish entry and leaving ages that reflect the needs of the local community, the law must allow for that variance. Requirements for advancement and graduation are often maintained at the national level. Likewise, if national authorities set policy regarding student attire or discipline, they must make clear whether local authorities can deviate from those norms. If there are no national norms, the central authority must decide whether to allow local authorities to make those decisions.

Teacher Employment, Certification, and Academic Freedom

Questions that may be raised in connection with teacher certification include:

- Who will set the standards for the initial training of teachers? Who will provide this training?
- Who will hire and fire teachers?
- Will teachers have to become certified? Who controls the certification process? Is there more than one route to certification?
- Will teachers have tenure? How will they be granted tenure? What protection will it afford them?
- Will teachers' unions be recognized? If so, what will be their role?
- Will teachers enjoy academic freedom?
- How will teachers be evaluated, promoted, and fired?
- Who will be responsible for inservice training? Who will pay for it?

The certification, hiring, retention, and promotion of teachers are potential sources of difficulty and must be addressed by the law. Typically, in centralized systems the power to certify teachers is held by central authorities. Local authorities often request this power, or

the power to provide alternative routes to certification, arguing that they should be allowed to use individuals that possess the needed skills but who have not gone through formal pedagogical training. Decentralization efforts should address this issue.

If teacher tenure is granted, local authorities will be constrained, just as the central authority was. Tenure may grant employment protection to teachers that is difficult to overturn. While local authorities may resent those constraints, teachers are not likely to give up this protection except in exchange for other significant benefits.

If academic freedom is established by law or custom, teachers will need to be protected against retaliation by local authorities if they choose to teach a subject in a fashion that is distasteful to authorities. In such a case local control may conflict with established laws or customs regarding freedom of expression.

Inservice training is another area involving teachers and the law. Some countries require ongoing training to maintain certification, and the central authority controls training. The decentralization effort could require that local authorities have a greater role in this area. The law should address this issue.

Curriculum and Instruction

Questions related to curriculum and instruction include:

- Are there constitutional requirements regarding the curriculum? If so, does the constitution allow for deviations from those requirements, and will local authorities be authorized to make such deviations?
- Will the central ministry have the authority to determine the curriculum and other aspects of instruction? If so, will local authorities have the power to deviate from those requirements?
- Will the central authority have a legal obligation to accept local decisions on the curriculum?
- If local authorities have the ability to establish the curriculum or to deviate from the one established by the center, what is their legal accountability regarding national standards?
- Who will select textbooks and other instructional materials?
- Will the central ministry mandate the length of a school day and the number of hours devoted to a specific subject?

Local control over the curriculum has long been a theme in education in the United States, whereas there has been very little local control in

countries with highly centralized education systems. In France some flexibility has been granted to individual schools and teachers rather than to local authorities. Central control of the curriculum is often seen as a means of promoting certain national objectives on languages and national values. Many developing countries have prescribed courses of study, while others have an examination system that indirectly prescribes the curriculum. If decentralization allows local authorities to have discretion over the curriculum, there should be a mechanism that allows the local entity to seek waivers. The law should ensure that the central authority recognizes or validates the curriculum decisions by the local authority.

Assessment of Learning

A sample listing of questions on assessing learning includes:

- Who will determine the standards that are used to assess student learning?
- What allowances will be made for local and regional variations?
- Will local authorities have the power to develop or select alternative forms of assessment?
- What decisions or actions will be based on the results of assessment?
- Will students have some recourse if their learning does not meet standards?

A national assessment system may help students move from one region of the country to another. It may also provide the basis for measuring regional disparities and limits the possibility of local authorities manipulating assessments to show good results.

Koretz (1995) points out some of the concerns regarding assessment in the context of decentralization. One of the most important deals with the use of a single assessment tool to "model good instructional practice, to hold schools accountable for student performance, and to monitor the overall performance of the system and the impact of the reforms" (Koretz 1995: 3). As Koretz points out, it is unlikely that there will be a "one size fits all" assessment tool. The law should recognize that fact and allow different assessments to be used for each function.

Determination of standards controls how much freedom a local entity actually has. Furthermore, using assessment to determine the effectiveness of the decentralization process creates the possibility that the assessment process will be corrupted to achieve the desired means. Thus the law must ensure the integrity of the testing process.

The use of a common language is often required or encouraged at a national level and used to support nation building. If the central authority determines that assessment in a particular language will be required, the choice of the language of instruction will be limited, and local entities will be constrained in their use of local or regional languages or dialects. The law must address whether waivers may be granted for local or regional variations in assessment and what alternative forms of assessment are available. Assessment of language is only the most visible example; other areas of required instruction in which variations may be requested include history, literature, religion, and vocational and technical training.

Another legal issue raised by assessment is whether students have recourse if they do not achieve stated curriculum goals. The law should make it clear that educational goals are just goals, not guarantees, and that students do not derive rights from the formulation of these objectives in the law.

We also must consider the legal consequence of a local authority's failure to achieve a particular standard of assessment. For example, should continued funding of a school be based (in whole or in part) on its students' attaining a certain level of achievement? Should the certification or recognition of a school depend on test scores? Should waivers or alternative assessments be available to local entities? There are no right answers to these questions, but for the success of the reform they must be addressed in the decentralization law.

Facilities

Decentralization creates a special set of legal issues with respect to facilities. Without local control over property, local authorities may have little true autonomy. Questions to be addressed include:

- Who will own the school facilities?
- Will the central ministry have the power to establish uniform facility standards?
- Who will be responsible for the maintenance and repair of school and other buildings?
- How are equity issues addressed with respect to facilities?

Ownership of school facilities has important legal consequences. With ownership comes responsibility for maintenance and repair, and potential liability for substandard facilities. If ownership is to be trans-

ferred to local authorities, it is important that they be given the human and financial resources to enable them to discharge their responsibilities. A transfer would also require that the facilities be properly priced (unless they are transferred cost free).

If ownership of facilities (or responsibility for their maintenance) is to be transferred to local authorities, health and safety concerns provide strong reasons for maintaining central standards in the design and construction of school buildings, and a central capacity to ensure that standards are maintained.

Uniform bidding requirements, accounting standards, and inspection procedures would normally be set within a geographic or functional subdivision to ensure that money is spent appropriately. If left solely to the discretion of local authorities, there may be abuses.

The final legal issue concerning facilities revolves around equity. It is clear that the physical environment has an impact on student learning. Moreover, some education requires certain facilities (science laboratories, computer systems, technical laboratories). Any decentralization effort should ensure that students in diverse settings will have comparable facilities.

Funding

Early resolution of funding issues is fundamental to the success of reform. No aspect of the decentralization effort can succeed without proper attention to funding. Among the questions that need to be asked are:

- What source of funding will be available to the authority responsible for implementing each aspect of the basic education system?
- If the central government is to continue to fund the local entities responsible for primary education, what assurance will the local bodies have that the funding will be secured? How will central resources be allocated to the various local bodies? What freedom will local authorities be granted in the use of the funds?
- If local bodies are to be responsible for securing their own funds to finance primary education, what sources will be made available to them? If local authorities are to be given the power to tax, is the tax base sufficient to yield enough revenues for this purpose?
- Under which financial and budgetary rules will local authorities operate? Are these rules in place, or do they have to be issued?
- Who will oversee and audit the finances of local authorities?

- How will equity concerns be addressed? Will the central allocation system make sufficient allowance for differences in need among regions? What mechanism will be used to compensate for possible inequitable results of local funding?

4

Getting from Here to There: A Road Map for the Decentralization Process

The purpose of this exercise is to obtain a clear picture of which entities initially have the responsibility for the different functions of education, and how responsibility for these functions will be transferred, delegated, or devolved to local entities. The choice of the entity responsible for a particular function will determine which type of legislation is necessary.

The successful adoption and implementation of the decentralization law requires that the concerns of critical interest groups be taken into account. These include not only teachers and their unions, parents, and regional and local government officials, but also other groups such as churches or donors.

Implementing change requires the establishment of clear responsibilities and of efficient control mechanisms at every level. The main steps that must be taken to successfully plan and implement a decentralization law are as follows:

- Clearly establish what the goal of the decentralization is. Is it greater local participation in the management of the system? Greater effectiveness in the use of scarce resources? Saving of financial resources for the central government?
- Decide which form of decentralization is being undertaken (deconcentration, delegation, devolution) for each function. In other words, which body will be responsible for each function?
- Assess the institutional capacity of the administrative levels that will be given new responsibilities and prepare a plan to enhance administrative capacity, if necessary.
- Make an inventory of the laws and regulations that currently regulate the provision of basic education, including those that affect it indirectly, such as civil service laws and tax laws. Identify those laws and regulations that will need to be modified to implement the reform.
- Map out the links between different levels of government that are responsible for some aspect of basic education (make a chart) and

the changes that will need to be made in these links to complete the reform.

- Assess the gap between law and practice for the most important aspects of the present system. Are current laws affecting basic education being implemented? If not, why?
- Evaluate the probable resistance to change that may be encountered in implementing the reform.
- Determine which groups in society have an interest in the reform and involve these stakeholders in the reform process.
- Determine the sequence in which laws and regulations will need to be modified; estimate the time needed for implementing each step and the phases of the transition.

Glossary of Legal Terms

Act. A legal instrument or statute adopted by a parliament after discussion.

Administrative authority. The power of an agency to carry out the terms of the law that established it. Administrative authority is always limited to what the law authorizes. The term is also used to refer to a body that is given such authority.

Administrative directives. Instructions given to those charged with implementing a law, indicating the manner in which the government understands the law and intends to apply it. Administrative directives do not have the force of law.

Administrative law. The part of the law that regulates the relationship between citizens and the administration of their country.

Constitution. The fundamental law of a country, which may be written or unwritten and which establishes the character and conception of its government; lays down the basic principles governing its internal life; organizes the government; regulates, distributes, and limits the functions of its different organs; and prescribes the extent and manner in which sovereign power will be exercised in the country. The constitution is the highest source of norms in the country, and all laws must conform to it.

Corporation. An artificial person or legal entity created by or under the authority of the laws of a state. Corporations have a legal personality and existence distinct from that of its members or officers.

Decentralization. In its broadest sense, the act of conferring authority either to an agent that is lower in the same hierarchy and located closer to the users of the service the agent administers (deconcentration), or to a separate and independent authority (decentralization proper or devolution). In the French administrative terminology, decentralization is

used only in this second, narrow sense, and is contrasted with deconcentration.

Deconcentration. The act of giving authority to make certain decisions to regional representatives of the central administration with the understanding that these representatives remain under the hierarchical control of the central government.

Decree. A body of standards or rules adopted by the executive branch of the government. Decrees are usually enacted to provide further details on the implementation of laws. Decrees are below laws, and they must conform to laws.

Delegation. An act by which the holder of authority transfers its exercise to another authority. In the French terminology delegation of powers takes place only within the same body.

Devolution. The transfer of responsibility to a local body that is called on to fulfill this function according to a pre-established order.

Law. A body of binding principles, standards, or rules adopted by a parliament or legislature (or in some cases by the executive) and promulgated in accordance with specific procedures.

Legal entity. An entity, other than a natural person, that can function legally, be sued and sue, and make decisions through agents, as in the case of corporations.

Organic law. Used to refer to the constitution of a country or to a law defining the organization of government, or to refer to a very general law that sets out the broad objectives that the parliament has established for the country in a particular field.

Regulations. Rules issued by various governmental departments or agencies to carry out the intent of the law. In the usual hierarchy of norms, regulations fall below laws and decrees.

Resolution. A formal expression of the opinion or will of a corporate body or a public assembly.

References

Amaral, A . L., A. Guedes, T. Lobo, and R. Walker. 1995. "Decentralized Management of Education in Minas Gerais, Brazil." Paper presented at World Bank Seminar on Education Decentralization, June 2, World Bank, Human Development Department, Washington, D.C.

Asare-Beiako, Nana, Yaw Boachie-Danquah, Medjomo Coulibaly, Y. K. Effah, James Nti, and James Williams. 1995. "Quality Assurance and School Level Management: A Review of the Management System for Basic Education in Ghana." U.S. Agency for International Development, Accra, Ghana.

Blair, Harry. 1995. "Assessing Democratic Decentralization: ACDIE Concept Paper." Paper prepared for the U.S. Agency for International Development, Bureau for Policy and Program Coordination, Washington, D.C.

Bray, Mark. 1984. *Educational Planning in a Decentralized System: The Papua New Guinean Experience*. Port Moresby, Papua New Guinea: University of Papua New Guinea Press.

———. 1996. *Decentralization in Education: Community Financing*. Directions in Development series, Washington, D.C.: World Bank.

Brown, Anthony F., and Marvin Zuker. 1994. *Education Law*. Toronto: Thomson Canada.

Bullock, Alison, and Hywel Thomas. 1996. "Schools at the Centre? A Study of Decentralisation." University of Birmingham, School of Education, Birmingham, U.K.

Carter, J. Roger. 1966. *The Legal Framework of Educational Planning and Administration in East Africa*. Paris: United Nations Educational, Scientific, and Cultural Organization, International Institute for Educational Planning.

dos Santos, Filho, and Jose Camilo. 1993. "The Recent Process of Decentralization and Democratic Management of Education in Brazil." In *International Review of Education* 39(5): 391–403.

Espinola, Viola. 1995. "Institutional Analysis on Chile." Draft of field interview. World Bank, Education and Social Policy Department, Washington, D.C.

Fiske, Edward. 1996. *Decentralization of Education: Gaining Consensus*. Directions in Development series. Washington, D.C.: World Bank.

France, Ministry of National Education. 1993. *Primary Education in France*. Paris.

———. 1995. *La répartition des compétences dans le système éducatif français*. Paris.

Gaynor, Cathy. Forthcoming. "Decentralization of Education: Teacher Management." Directions in Development series. Washington, D.C.: World Bank.

Ghai, Yash, and A. J. Regan. 1988. "Constitutional Arrangements for Decentralisation in Papua New Guinea: An Overview." IASER Discussion Paper 56. Institute of Applied Social and Economic Research, Port Moresby, Papua New Guinea.

———. 1989. "Decentralisation and Intergovernmental Relations in Papua New Guinea." IASER Discussion Paper 57. Institute of Applied Social and Economic Research, Port Moresby, Papua New Guinea.

———. 1992. *The Law, Politics and Administration of Decentralization in Papua New Guinea*. Monograph 30. Boroko, Papua New Guinea: The National Research Institute.

Gwaunza, Elizabeth Chiedza, and Melania Chasia Rukanda. 1995. "A Study into the Legal Framework for Teacher Management in Zimbabwe." Donors to African Education Working Group on the Teaching Profession, Teacher Management and Support Programme, Commonwealth Secretariat, London.

Hannaway, Jane. 1995. "Educational Decentralization in India." Paper presented at the World Bank Seminar on Education Decentralization, June 2, World Bank, Human Development Department, Washington, D.C.

Hanson, E. Mark. 1986. *Educational Reform and Administrative Development: The Cases of Colombia and Venezuela*. Stanford, Calif.: Hoover Institution Press.

———. 1995. "Best (and Worst) Practices in Educational Decentralization: The Cases of Venezuela, Colombia, Argentina, and Spain." Paper presented at the World Bank Seminar on Education Decentralization, June 2. World Bank, Human Development Department, Washington, D.C.

Koretz, Daniel. 1995. "Standards and Assessment in the Context of Educational Decentralization." Paper presented at the World Bank Seminar on Education Decentralization, June 2, World Bank, Human Development Department, Washington, D.C.

Mares Guia Neto, S. Walfrido. 1994. "The Educational Policy of the State of Minas Gerais: 1991–94." Ministry of Education, Minas Gerais, Brazil.

Mexico, Secretaría de Educación Pública. 1992. "Acuerdo Nacional para la Modernización de la Educación Básica." Mexico City.

———. 1993. "Ley General de Educación." *Diario Oficial de la Federación*. July 13, pp. 42–56.

Mutahaba, Gelase R. 1991. *Reforming Public Administration for Development: Experiences from Eastern Africa*. West Hartford, Conn.: Kumarian Press.

Nolledo, Jose N. 1994. *The 1991 Local Government Code with Basic Features*. Manila: National Book Store.

Parry, Taryn Ronds. 1994. *The Impact of Decentralization and Competition on Quality of Education: An Assessment of Education Reforms in Chile*. Athens, Ga.: University of Georgia.

Prawda, Juan. 1992. "Educational Decentralization in Latin America: Lessons Learned. A View from LATHR 27." World Bank, Latin America and the Caribbean Region Technical Department, Human Resources Division, Washington, D.C.

Regan, Anthony J. 1988. "National Government Control of Funding of Provincial Activities." IASER Discussion Paper 55. Institute of Applied Social and Economic Research, Port Moresby, Papua New Guinea.

Rideout, William M., and Ipek Ural. 1993. *Centralized and Decentralized Models of Education: Comparative Studies*. Policy Working Paper 1. Halfway House, South Africa: Development Bank of South Africa, Centre for Policy Analysis.

Rondinelli, Dennis A., John R. Nellis, and G. Shabbir Cheema. 1984. "Decentralization in Developing Countries: A Review of Experience." World Bank Staff Working Paper 581. Washington, D.C.

United Kingdom, Department for Education and Employment. 1995. *The English Education System: An Overview of Structure and Policy*. London: Her Majesty's Stationery Office.

Winkler, Donald R. 1993. "Fiscal Decentralization and Accountability in Education: Experiences in Four Countries." In Jane Hannaway and Martin Carnoy, eds., *Decentralization and School Improvement: Can We Fulfill the Promise?* San Francisco: Jossy-Bass.

Zuker, Marvin A. 1988. *The Legal Context of Education*. Ontario, Canada: The Ontario Institute for Studies in Education.

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